

FIRST REGULAR SESSION

# SENATE BILL NO. 229

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time January 29, 2013, and ordered printed.

TERRY L. SPIELER, Secretary.

1110S.011

## AN ACT

To repeal section 630.170, RSMo, and to enact in lieu thereof one new section relating to the mental health employment disqualification registry.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 630.170, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 630.170, to read as follows:

630.170. 1. A person who is listed on the department of mental health  
2 disqualification registry pursuant to this section, who is listed on the department  
3 of social services or the department of health and senior services employee  
4 disqualification list pursuant to section 660.315, or who has been [convicted]  
5 **found guilty** of or [pled] **pleaded** guilty or nolo contendere to any crime  
6 pursuant to section 565.210, 565.212, or 565.214, or section 630.155 or 630.160  
7 shall be disqualified from holding any position in any public or private facility,  
8 day program, residential facility, or specialized service operated, licensed,  
9 certified, accredited, in possession of deemed status, or funded by the department  
10 or in any mental health facility or mental health program in which people are  
11 admitted on a voluntary or involuntary basis or are civilly detained pursuant to  
12 chapter 632.

13 2. A person who has been [convicted] **found guilty** of or [pled] **pleaded**  
14 guilty or nolo contendere to **any felony offense as defined in chapter 195;**  
15 any felony offense against persons as defined in chapter 565; any felony [sexual]  
16 offense as defined in chapter 566; any felony offense defined in section 568.020,  
17 568.045, 568.050, 568.060, **568.175**, 569.020, 569.025, 569.030, 569.035, 569.040,  
18 569.050, 569.070, [or] 569.160, **570.030, 570.040, 570.090, 570.145, 570.223,**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

19 **575.230, or 576.080**, or of an equivalent felony offense **in another state**, or who  
20 has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo  
21 contendere to any violation of subsection 3 of section 198.070, **or who has been**  
22 **found guilty of or pleaded guilty or nolo contendere to a violation of**  
23 **section 577.010 or section 577.012 and who is alleged and found by the**  
24 **court to be an aggravated or chronic offender under section 577.023**, or  
25 has been [convicted] **found guilty** of or [pled] **pleaded** guilty or nolo  
26 contendere to any offense requiring registration under section 589.400, shall be  
27 disqualified from holding any direct-care position in any public or private facility,  
28 day program, residential facility or specialized service operated, licensed,  
29 certified, accredited, in possession of deemed status, or funded by the department  
30 or any mental health facility or mental health program in which people are  
31 admitted on a voluntary basis or are civilly detained pursuant to chapter 632.

32         3. A person who has received a suspended imposition of sentence or a  
33 suspended execution of sentence following a plea of guilty to any of the  
34 disqualifying crimes listed in subsection 1 or 2 of this section shall remain  
35 disqualified.

36         4. Any person disqualified pursuant to the provisions of subsection 1 or  
37 2 of this section may seek an exception to the disqualification from the director  
38 of the department or the director's designee, **especially if the person is in**  
39 **recovery and the disqualifying felony offense was alcohol or drug**  
40 **related**. The request shall be written and may not be made more than once  
41 every six months. The request may be granted by the director or designee if in  
42 the judgment of the director or designee a clear showing has been made by  
43 written submission only, that the person will not commit any additional acts for  
44 which the person had originally been disqualified for or any other acts that would  
45 be harmful to a patient, resident or client of a facility, program or service. The  
46 director or designee may grant an exception subject to any conditions deemed  
47 appropriate and failure to comply with such terms may result in the person again  
48 being disqualified. Any person placed on the disqualification registry prior to  
49 August 28, 2012, may be removed from the registry by the director or designee  
50 if in the judgment of the director or designee a clear showing has been made, by  
51 written submission only, that the person will not commit any additional acts for  
52 which the person had originally been disqualified for or any other acts that would  
53 be harmful to a patient, resident, or client of a facility, program, or

54 service. Decisions by the director or designee pursuant to the provisions of this  
55 subsection shall not be subject to appeal. The right to request an exception  
56 pursuant to this subsection shall not apply to persons who are disqualified due  
57 to being listed on the department of social services or department of health and  
58 senior services employee disqualification list pursuant to section 660.315, nor to  
59 persons disqualified from employment due to any crime pursuant to the  
60 provisions of chapter 566 or section 565.020, 565.021, 568.020, 568.060, 569.025,  
61 or 569.070.

62 5. An applicant for a position in any public or private facility, day  
63 program, residential facility, or specialized service operated, licensed, certified,  
64 accredited, in possession of deemed status, or funded by the department or any  
65 mental health facility or mental health program in which people are admitted on  
66 a voluntary basis or are civilly detained pursuant to chapter 632 shall:

67 (1) Sign a consent form as required by section 43.540 to provide written  
68 consent for a criminal record review;

69 (2) Disclose the applicant's criminal history. For the purposes of this  
70 subdivision "criminal history" includes any suspended imposition of sentence, any  
71 suspended execution of sentence, or any period of probation or parole; and

72 (3) Disclose if the applicant is listed on the employee disqualification list  
73 as provided in section 660.315, or the department of mental health  
74 disqualification registry as provided for in this section.

75 6. Any person who has received a good cause waiver issued by the  
76 department of health and senior services or its predecessor under subsection 9 of  
77 section 660.317 shall not require an additional exception under this section in  
78 order to be employed in a long-term care facility licensed under chapter 198.

79 7. Any public or private residential facility, day program, or specialized  
80 service operated, licensed, certified, accredited, in possession of deemed status,  
81 or funded by the department or any mental health facility or mental health  
82 program in which people are admitted on a voluntary basis or are civilly detained  
83 pursuant to chapter 632 shall, not later than two working days after hiring any  
84 person for a full-time, part-time, or temporary position that will have contact with  
85 clients, residents, or patients:

86 (1) Request a criminal background check as provided in section 43.540;

87 (2) Make an inquiry to the department of social services and department  
88 of health and senior services to determine whether the person is listed on the

89 employee disqualification list as provided in section 660.315; and

90 (3) Make an inquiry to the department of mental health to determine  
91 whether the person is listed on the disqualification registry as provided in this  
92 section.

93 8. An applicant who knowingly fails to disclose his or her criminal history  
94 as required in subsection 5 of this section is guilty of a class A misdemeanor. A  
95 provider is guilty of a class A misdemeanor if the provider hires a person to hold  
96 a direct-care position knowing that such person has been disqualified pursuant  
97 to the provisions of subsection 2 of this section. A provider is guilty of a class A  
98 misdemeanor if the provider hires a person to hold any position knowing that  
99 such person has been disqualified pursuant to the provisions of subsection 1 of  
100 this section.

101 9. Any public or private residential facility, day program, or specialized  
102 service operated, licensed, certified, accredited, in possession of deemed status or  
103 funded by the department or any mental health facility or mental health program  
104 in which people are admitted on a voluntary basis or are civilly detained  
105 pursuant to chapter 632 that declines to employ or discharges a person who is  
106 disqualified pursuant to the provisions of subsection 1 or 2 of this section shall  
107 be immune from suit by that person or anyone else acting for or in behalf of that  
108 person for the failure to employ or for the discharge of the person due to  
109 disqualification.

110 10. Any employer who is required to discharge an employee because the  
111 employee was placed on a disqualification registry maintained by the department  
112 of mental health after the date of hire shall not be charged for unemployment  
113 insurance benefits based on wages paid to the employee for work prior to the date  
114 of discharge pursuant to section 288.100.

115 11. The department shall maintain a disqualification registry and place  
116 on the registry the names of any persons who have been finally determined by the  
117 department to be disqualified based upon administrative substantiations made  
118 against them for abuse or neglect pursuant to department rule or  
119 regulation. Such list shall reflect that the person is barred from holding any  
120 position in any public or private facility, day program, residential facility, or  
121 specialized service operated, licensed, certified, accredited, in possession of  
122 deemed status, or funded by the department, or any mental health facility or  
123 mental health program in which persons are admitted on a voluntary basis or are

124 civilly detained pursuant to chapter 632. The length of time the person's name  
125 shall appear on the disqualification registry shall be determined by the director  
126 or the director's designee, based upon the criteria contained in subsection 13 of  
127 this section.

128         12. Persons notified that their name will be placed on the disqualification  
129 registry may appeal such determination pursuant to department rule or  
130 regulation. If the person appeals, the hearing tribunal shall not modify the  
131 length of time the person's name shall appear on the disqualification registry if  
132 the hearing tribunal upholds all of the administrative substantiations made by  
133 the director or the director's designee. If the hearing tribunal overturns part of  
134 the administrative substantiations made by the director or the director's designee,  
135 the hearing tribunal may consider modifying the length of time the person's name  
136 shall appear on the disqualification registry based upon testimony and evidence  
137 received during the hearing.

138         13. The length of time the person's name shall appear on the  
139 disqualification registry shall be determined by the director or the director's  
140 designee based upon the following:

141             (1) Whether the person acted recklessly or knowingly, as defined in  
142 chapter 562;

143             (2) The degree of actual or potential injury or harm to the patient,  
144 resident, or client;

145             (3) The degree of actual or potential danger to the health, safety, or  
146 welfare of the patient, resident, or client;

147             (4) The degree of misappropriation or conversion of patient, resident, or  
148 client funds or property;

149             (5) Whether the person has previously been listed on the department's  
150 disqualification registry;

151             (6) Any mitigating circumstances; and

152             (7) Any aggravating circumstances.

153         14. The department shall provide the disqualification registry maintained  
154 pursuant to this section to other state and federal agencies upon request. The  
155 department may provide the disqualification registry maintained pursuant to this  
156 section to any public or private facility, day program, residential facility, or  
157 specialized service operated, licensed, certified, accredited, in possession of  
158 deemed status, or funded by the department or to any mental health facility or

159 mental health program in which people are admitted on a voluntary or  
160 involuntary basis or are civilly detained pursuant to chapter 632. The  
161 department may also provide the disqualification registry to a recognized school  
162 of nursing, medicine, or other health profession for the purpose of determining  
163 whether students scheduled to participate in clinical rotations are included in the  
164 employee disqualification registry.

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